1 2 3 4 5 6 7 8 IN THE UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF CALIFORNIA 10 BRIAN T. ROGERS, 11 Petitioner, No. CIV S-01-0975 FCD GGH P 12 VS. 13 CLAUDE FINN, 14 Respondent. **ORDER** 15 On April 29, 2004, the court dismissed the petition on grounds that the claims 16 17 were procedurally defaulted. On December 16, 2005, the Ninth Circuit Court of Appeals 18 reversed and remanded this matter. 19 Having apparently determined that respondent did not meet its burden of proving 20 the adequacy of California's untimeliness rule (an issue that was never reached in this court 21 because petitioner had not met his burden) the Ninth Circuit nevertheless remanded this case for 22 the court to make this determination. The undersigned is puzzled by this seemingly conflicted 23 holding and remand. Nevertheless, respondent can attempt for the first time in this court to 24 establish the adequacy of the bar if respondent thinks he can do so. 25 ///// ///// 26

1	Accordingly, IT IS HEREBY ORDERED that within thirty days of the date of this
2	order, respondent may file a motion addressing the adequacy of California's untimeliness rule;
3	petitioner's opposition is due thirty days thereafter.
4	DATED: 1/10/06
5	/s/ Gregory G. Hollows
6	GREGORY G. HOLLOWS
7	UNITED STATES MAGISTRATE JUDGE
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